

5/18/04

# Adopted

## CDA Resolution #7

Adopts Rules and Procedures for Designation of Sponsor Process Pursuant to Article 15  
of the General Municipal Law

Member Blass offered the following Resolution

which was seconded by Member Sanders

WHEREAS, the Riverhead Community Development Agency is a designated urban renewal agency authorized by the New York State General Municipal Law with the power to perform all functions permitted under Article 15; and

WHEREAS, the disposition of property held from time to time in the Town of Riverhead by the Community Development Agency is undertaken pursuant to criteria stipulated in the law; and

WHEREAS, according to Section 507(2)(c) of Article 15 of the GML, real property owned by an urban renewal agency may be "disposed of for the effectuation of any of the purposes of the urban renewal program in accordance with the urban renewal plan (c) to any person, firm or corporation designated by the agency and approved by the governing body as a qualified and eligible sponsor in accordance with established rules and procedures prescribed by the agency..."

THEREFORE, BE IT RESOLVED, that the CDA hereby adopts the attached Rules and Procedures of the Riverhead CDA for the Designation of a Person, Firm or Corporation as a Qualified and Eligible Sponsor for the ongoing disposition of property by the CDA in any designated urban renewal area of the Town of Riverhead.

BE IT FURTHER RESOLVED, that the Town Clerk shall forward a certified copy of this resolution to Andrea Lohneiss, CDA Director, Dawn Thomas, Town Attorney and Bobby Goodale, RDC Chairman.

The Vote:

George Bartunek	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Rose Sanders	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Barbara Blass	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Ed Densieski	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Phil Cardinale	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

## ADOPTED

## **Rules and Procedures of the Riverhead Community Development Agency for the Designation of a Person Firm or Corporation as a Qualified and Eligible Sponsor**

Pursuant to Article 15, Section 507 of the New York State General Municipal Law, real property owned by the urban renewal agency may be disposed of in accordance with established rules and procedures prescribed by the agency.

The Rules and Procedures set forth for the review of proposals for the sale or lease of property by the CDA to a person, firm or corporation are established as follows:

1. For proposals for purchase or lease of Calverton Enterprise Park properties only, the applicant must be processed by the Riverhead Development Corporation (RDC) according to the RDC Calverton Proposal Review Policy (copy attached);
2. If the RDC recommends a proposed purchase or lease of property at the Calverton Enterprise Park, or if the applicant proposes a purchase or lease of property in any other Urban Renewal Area in the Town of Riverhead, the CDA shall then ascertain whether the applicant is "qualified and eligible" pursuant to Section 507 (2) (c) of Article 15 of New York State General Municipal Law and in accordance with the following criteria:
  - a. experience of the individual, firm or corporation with development, construction, management and financing of similar projects in size and scope to the proposed project;
  - b. demonstrated ability to finance the acquisition and development of specific project proposed including the review by the CDA of pro forma financial statements for the proposed project, including sources and uses of funds, certified personal and corporate financial statements of the applicant sponsor, financial commitments of participating lenders, proposed security for the project, business plans and economic analysis of the project and past compliance with municipal laws, rules and regulations.
  - c. demonstrated integrity and responsibility of the applicant sponsor as determined by the CDA based upon appropriate investigation by the Town Attorney and consistent with case law as reiterated in the Memorandum to Supervisor Phil Cardinale and Town Attorney Dawn Thomas dated March 12, 2004 from Randolph Mayer, Willkie Farr & Gallagher, LLP;
  - d. presentation of the applicant sponsor to the public at the prescribed hearing upon due notice at a public meeting of the CDA providing an opportunity for the applicant sponsor to present its proposal and ability to meet the established criteria for designation by the CDA as a "qualified and eligible" sponsor pursuant to Section 507 (2) (c) of Article 15 of New York State General Municipal Law.

Upon satisfactory determination by the CDA that an applicant sponsor is, in fact, "qualified and eligible," a resolution shall be duly adopted and the obligation of the CDA under the statute shall be concluded. The negotiation of a contract of sale shall be authorized by resolution of the CDA.

Prior to the transfer of title from the CDA to the applicant sponsor or execution of a lease, a resolution authorizing the CDA Chairman to execute a deed or lease is required.

In the event that the ownership of the property shall revert to the Agency as a result of default by a qualified and eligible sponsor in completing the project approved by the governing body, the Agency shall dispose of the property in accordance with §507(c) and (d) of the General Municipal Law.

Date: May 18, 2004

## **RDC Calverton Proposal Review Policy**

**Whereas**, pursuant to an Agreement by and between the Riverhead Community Development Agency and the RDC dated March 27, 1997, the Riverhead Town Board in its capacity as the Riverhead Community Development Agency (CDA) did authorize the RDC to market the property formerly known as the Naval Weapons Industrial Reserve Plant (NWIRP) and now known as the Calverton Enterprise Park for "the purposes of providing employment at Calverton, increasing the assessed valuation of property at Calverton, thereby increasing taxes, assessments or payments in lieu of taxes at Calverton for the benefit of the Town and the residents thereof, protecting the environment at Calverton and otherwise in the orderly and efficient marketing and redevelopment of Calverton for the health, safety and welfare of the residents of the Town, all in accordance with Town zoning, the "Comprehensive Use Strategy for the Naval Weapons Industrial Reserve Plant at Calverton and all Town Governing Requirements;" and

**Whereas**, the RDC remains generally the first level of review for proposals to the Town of Riverhead regarding the purchase of property at the Calverton Enterprise Park, while the CDA Board has consistently retained review authority for all short-term License Agreements, all Runway Use Agreements and several no-cost transfers of property.

**Therefore**, with regard to those proposals for purchase and redevelopment (ie: long-term lease) of land at Calverton Enterprise Park that are referred to the RDC for review and recommendation to the CDA Board, the RDC shall before consideration of such proposal require submission of the following documentation to the RDC Chairman:

1. Evidence of financial capability to acquire the property and to develop the site as proposed. A sources and uses of funds proforma must be provided. Personal and/or corporate financial statements must be provided. LLP and LLC structures will be considered only with appropriate guarantees provided by the principals;
2. Conformance with the applicable zoning statute as confirmed by the Town of Riverhead Planning Director;
3. Offering price consistent with the most recent land appraisal, Town Board determination and/or recommendation of the CDA's real estate broker for the subject land and proposed use(s);
4. Experience of the individuals and corporation with development construction, management and financing of similar projects in size and scope to the proposed project.

Note: Bank references, criminal background checks and similar evidence of credibility to confirm the character and ability of the applicant(s) are considered appropriate by the State of New York as are efforts to determine a potential sponsor's "responsibility,"

“reliability,” “accountability,” and the “possession of sufficient capital resources, skill, judgment, integrity and moral worth.”

Upon submission of the above materials and acceptable review, a prospective purchaser will be scheduled for presentations of the project to the RDC Board of Directors.

Upon its full review and discussion, the RDC will refer the project to the CDA Board with a positive or negative recommendation. Pursuant to Urban Renewal Law, it is incumbent on the CDA Board in its determination of a prospective sponsor to employ all resources available to it to ascertain whether an applicant is “responsible, reliable, accountable” and capable of successfully completing the proposed project.

Date: May 10, 2004

5/18/04

# Adopted

## TOWN OF RIVERHEAD

### COMMUNITY DEVELOPMENT AGENCY

Resolution # 8

#### **AUTHORIZES THE CHAIRMAN TO EXECUTE A CONTRACT WITH NF MANAGEMENT, INC.**

**COUNCILMAN DENSIESKI** offered the following resolution, was seconded  
by **COUNCILMAN BARTUNEK**:

**WHEREAS**, NF Management, Inc. has made an offer to purchase from the Town of Riverhead an 1800 square foot strip of Town land that fronts on Peconic Avenue in Downtown Riverhead that lies within the urban renewal area designated under the East Main Street Urban Renewal Map and Plan adopted by the Town Board on October 19, 1993 ; and

**WHEREAS**, NF Management, Inc. proposes to incorporate this 1800 square foot strip of land into its adjacent property on Peconic Avenue and develop and use the entire parcel in a manner consistent with the goals and objectives of said Urban Renewal Plan; and

**WHEREAS**, by Resolution # 400 dated May 18, 2004, the Town Board shall authorize the Supervisor to execute a Deed to convey the proposed portion of Town property as more particularly bounded and described on "Schedule A" annexed hereto to the Town of Riverhead Community Development Agency, the Urban Renewal Agency for the Town of Riverhead; and

**WHEREAS**, the Town of Riverhead Community Development Agency wishes to enter into an agreement to dispose of the subject property pursuant to Articles 15 and 15A of the General Municipal Law (Urban Renewal Law); **NOW, THEREFORE**

**BE IT RESOLVED**, that the Community Development Agency hereby authorizes the Chairman to execute a Contract of Sale, substantially in the form attached hereto, with NF Management, Inc., subject to the Purchaser being determined to be a Qualified and Eligible Sponsor pursuant to the requirements of Urban Renewal Law; and

**BE IT FURTHER RESOLVED**, that the Town Clerk shall forward a certified copy of this resolution to NF Management, Inc., 60 Ida Lane, P.O. Box 696, Aquebogue, NY 11931, the Town Attorney and the CDA Director.

#### THE VOTE

Bartunek ☒ yes ☐ no Sanders ☒ yes ☐ no  
Blass ☒ yes ☐ no Densieski ☒ yes ☐ no  
Cardinale ☒ yes ☐ no

THE RESOLUTION ☒ WAS ☐ WAS NOT  
THEREFORE DULY ADOPTED

## CONTRACT OF SALE

**THIS IS A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD,  
WE RECOMMEND ALL PARTIES TO THE CONTRACT CONSULT AN ATTORNEY  
BEFORE SIGNING.**

### NOTE: FIRE AND CASUALTY LOSSES AND CONDEMNATION

This contract form does not provide for what happens in the event of fire, or other casualty loss or condemnation before the title closing. Unless different provision is made in this contract, Section 5-1311 of the General Obligations Law will apply. One part of that law makes a Purchaser responsible for fire and casualty loss upon taking possession of the Premises before the title closing.

Contract of Sale made as of May \_\_\_\_\_, 2004 BETWEEN

THE TOWN OF RIVERHEAD COMMUNITY DEVELOPMENT AGENCY, an Urban Renewal Agency of the State of New York, 200 Howell Avenue, Riverhead, New York 11901

Social Security Number/Fed. I. D. No(s): hereinafter called "Seller" and

NF Management, Inc., a New York Corporation with a principal address at 60 Ida Lane, PO Box 696, Aquebogue, New York 11931

Social Security Number/Fed. I. D. No(s): hereinafter called "Purchaser."

### The parties hereby agree as follows:

**1. Premises.** Seller shall sell and convey and Purchaser shall purchase the property, ~~together with all buildings and improvements thereon~~ (collectively the "Premises"), more fully described on a separate page marked "Schedule A," annexed hereto and made a part hereof and also known as:  
Street Address: No Number Peconic Avenue, SCTM # 0600-128-6- p/o 86, Specifically an 1800 square foot strip of property running along southerly boundary of SCTM # 0600-128-6-83.

Tax Map Designation: 0600-128-6- p/o 86

**2. Personal Property.** The sale does not include any fixtures and articles of personal property that may exist upon the premises and Seller makes no representations or warranties of the existence or presence of same and Purchaser accepts said Premises "AS IS" as hereinafter provided in Section 10.

**3. Purchase Price.** The purchase price is \$10,000.00 payable as follows:

(a) on the signing of this contract, by Purchaser's check payable to the Escrowee (as hereinafter defined), subject to collection, the receipt of which is hereby acknowledged, to be held in escrow pursuant to paragraph 6 of this contract (the "Downpayment"): \$1,000.00

(b) by allowance for the principal amount unpaid on the existing mortgage on the date hereof, payment of which Purchaser shall assume by joinder in the deed: \$ 0

(c) by a purchase money note and mortgage from Purchaser to Seller: \$ 0

(d) balance at Closing in accordance with paragraph 7: \$ 9,000.00

**4. Downpayment in Escrow.** (a) The Financial Administrator of the Town of Riverhead ("Escrowee") shall hold the Downpayment for Seller's account in escrow in a segregated bank account at Suffolk County National Bank located on Second Street, Riverhead, New York until Closing or sooner termination of this contract and shall pay over or apply the Downpayment in accordance with the terms of this paragraph. Escrowee shall not hold the Downpayment in an interest-bearing account for the benefit of the parties but rather the Downpayment shall be placed in a Town of Riverhead Trust Account or as otherwise permitted or required by law. The Social Security or Federal Identification numbers of the parties shall be furnished to Escrowee upon request. At Closing, the Downpayment shall be paid by Escrowee to Seller. If for any reason Closing does not occur and either party gives Notice to Escrowee demanding payment of the Downpayment, Escrowee shall give prompt Notice to the other party of such demand. If Escrowee does not receive Notice of objection from such other party to the proposed payment within 10 business days after the giving of such Notice, Escrowee is hereby authorized and directed to make such payment. If Escrowee does receive such Notice of objection within such 10 day period or if for any other reason Escrowee in good faith shall elect not to make such payment, Escrowee shall continue to hold such amount until otherwise directed by Notice from the parties to this contract or a final, nonappealable judgment, order or decree of a court. However, Escrowee shall have the right at any time to deposit the Downpayment and the interest thereon with the clerk of a court in the county in which the Premises are located and shall give Notice of such deposit to Seller and Purchaser. Upon such deposit or other disbursement in accordance with the terms of this paragraph, Escrowee shall be relieved and discharged of all further obligations and responsibilities hereunder.

(b) The parties acknowledge that, although Escrowee is holding the Downpayment for Seller's account, for all other purposes Escrowee is acting solely as a stakeholder at their request and for their convenience and that Escrowee shall not be liable to either party for any act or omission on its part unless taken or suffered in bad faith or in willful disregard of this contract or involving gross negligence on the part of Escrowee. Seller and Purchaser jointly and severally agree to defend, indemnify and hold Escrowee harmless from and against all costs, claims and expenses (including reasonable attorneys' fees) incurred in connection with the performance of Escrowee's duties hereunder, except with respect to actions or omissions taken or suffered by Escrowee in bad faith or in willful disregard of this contract or involving gross negligence on the part of Escrowee.

(c) Escrowee may act or refrain from acting in respect of any matter referred to herein in full reliance upon and with the advice of counsel which may be selected by it (including any member of its firm) and shall be fully protected in so acting or refraining from acting upon the advice of such counsel.

(d) Escrowee acknowledges receipt of the Downpayment by check subject to collection and Escrowee's agreement to the provisions of this paragraph by signing in the place indicated on the signature page of this contract.

**5. Acceptable Funds.** All money payable under this contract, unless otherwise specified, shall be paid by:

(a) Cash, but not over \$1,000.00;

(b) Good certified check of Purchaser drawn on or official check issued by any bank, savings bank, trust company or savings and loan association having a banking office in the State of New York, unendorsed and payable to the order of Seller, or as Seller may otherwise direct upon not less than 3 business days notice (by telephone or otherwise) to Purchaser;

(c) As to money other than the purchase price payable to Seller at Closing, uncertified check of Purchaser up to the amount of \$500.00; and

(d) As otherwise agreed to in writing by Seller or Seller's attorney.



**6. Permitted Exceptions.** The Premises are sold and shall be conveyed subject to:

(a) Zoning and subdivision laws and regulations, and landmark, historic or wetlands designation, provided that they are not violated by the existing buildings and improvements erected on the property or their use;

(b) Consents for the erection of any structures on, under or above any streets on which the Premises abut;

(c) Encroachments of stoops, areas, cellar steps, trim and cornices, if any, upon any street or highway;

(d) Real estate taxes that are a lien, but are not yet due and payable; and

(e) The other matters, if any, including a survey exception, set forth in a Rider attached.

**7. Governmental Violations and Orders.** (a) Seller shall comply with all notes or notices of violations of law or municipal ordinances, orders or requirements noted or issued as of the date hereof by any governmental department having authority as to lands, housing, buildings, fire, health, environmental and labor conditions affecting the Premises. The Premises shall be conveyed free of them at Closing. Seller shall furnish Purchaser with any authorizations necessary to make the searches that could disclose these matters.

**8. Seller's Representations.** (a) Seller represents and warrants to Purchaser that:

(i) The Premises abut or have a right of access to a public road;

(ii) Seller is the sole owner of the Premises and has the full right, power and authority to sell, convey and transfer the same in accordance with the terms of this contract subject to all the requirements of Section 503-a(4) of the General Municipal Law of the State of New York as same may apply to the disposition of property by an urban renewal agency, including but not limited to the determination that Purchaser is a "Qualified and Eligible Sponsor" as required by Section 507 of the General Municipal Law of the State of New York;

(iii) Seller is not a "foreign person," as that term is defined for purposes of the Foreign Investment in Real Property Tax Act, Internal Revenue Code ("IRC") Section 1445, as amended, and the regulations promulgated thereunder (collectively "FIRPTA");

(iv) The Premises are currently wholly exempt from taxes; and

(v) Seller has been known by no other name for the past ten years.

(b) Seller covenants and warrants that all of the representations and warranties set forth in this contract shall be true and correct at Closing.

(c) Except as otherwise expressly set forth in this contract, none of Seller's covenants, representations, warranties or other obligations contained in this contract shall survive Closing.

**9. Purchaser's Representations.** (a) Purchaser represents and warrants the following to Seller, each of which is true and correct in all material respects as of the date of this Contract and shall be true and correct on the date of Closing as though such representations and warranties had been made at time:

(i) Purchaser is now and on the date of Closing shall be a valid legal entity duly authorized under the laws of the State of New York to conduct business and, by its organizational charter and purposes, to acquire the Property;

(ii) Purchaser has the right, power and legal authority to make and perform all of its obligations under this Contract and this Contract is a valid and binding obligation of Purchaser enforceable against Purchaser in accordance with its terms, subject to bankruptcy, reorganization and other similar laws affecting the enforcement of creditors' rights generally;

(iii) Purchaser shall redevelop the Property in a manner that shall effectuate and be consistent with the purposes of the urban renewal program and in accordance with the urban renewal plan adopted by the Urban Renewal Agency of the Town of Riverhead on October 19, 1993;

(iv) Purchaser does not have any knowledge of the existence of any facts or circumstances that would preclude it from or impair its ability to be determined to be a "qualified and eligible sponsor" by the governing body of the Urban Renewal Agency of the Town of Riverhead as provided in Section 507 of General Municipal Law of the State of New York and has the financial wherewithal to complete the redevelopment of the Property as contemplated by the parties and as depicted on the Elevation Plan of NF Management prepared by Martin F. Sendlewski, AIA dated 8-05-03, revised 9-04-03 and submitted for review by the Architectural Review Board of the Town of Riverhead;

(b) Purchaser acknowledges that the execution of this Contract by Seller has been made, and the sale and transfer of the Property by Seller to Purchaser shall be made, in material reliance by Seller upon such representations and warranties made by Purchaser herein.

(c) The representations, warranties and covenants of Purchaser contained in this Contract shall survive the Closing Date and the recording of the Deed.

**10. Condition of Property.** (a) As-Is. Purchaser acknowledges that Seller is transferring, and Purchaser shall accept, the Property in "AS IS" condition WITHOUT ANY REPRESENTATION OR WARRANTY, STATED OR IMPLIED, WHATSOEVER BY SELLER OR ANY EMPLOYEES, REPRESENTATIVES OR AGENTS OF SELLER RELATING TO THE PROPERTY, INCLUDING BUT NOT LIMITED TO THE EXPRESS WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

(b) Release. On Closing, and subject to Section 11 of this contract, Purchaser, on behalf of itself, its trustees, officers, directors, shareholders, partners (limited and general), members, joint venturers and principals and its and their respective successors and assigns, does hereby forever release Seller, its parent, subsidiaries and affiliates and their respective officers, directors, shareholders, partners (limited and general), members, joint venturers, principals, agents, managing agent and employees, and its and their respective successors and assigns, of and from any and all losses, liabilities, damages, claims, demands, causes of action, costs and expenses, whether known or unknown, arising out of or in any way connected with the Property, including, without limitation, the condition of title to the Property and the environmental condition of the Property. Further, by the execution of this Agreement, Purchaser does hereby forever release Seller of and from any environmental claims and causes of action existing now or hereafter created or enacted, whether at common law or by federal, state, county, or municipal law or ordinance. Purchaser agrees never to commence, aid in any way, or prosecute against Seller, its parent, subsidiaries and affiliates and their respective officers, directors, shareholders, partners (limited and general), members, joint venturers, principals, agents and employees and its and their respective successors and assigns, any action or other proceeding based upon any losses, liabilities, damages, environmental claims, demands, causes of action, costs and expenses, covered in this paragraph.

(c) Waiver. Purchaser expressly waives any rights or benefits available to it with respect to the foregoing release under any provision of applicable law which generally provides that a general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time the release is agreed to, which, if known to such creditor, would materially affect a settlement. Purchaser, by the execution of this Agreement, acknowledges that Purchaser fully understands the foregoing, and with this understanding, nonetheless elects to and does assume all risk for claims known or unknown, described in this Section 12. Purchaser acknowledges and represents that Purchaser is fully aware of the physical condition and state of repair of the Premises and of all other

property included in this sale, based on Purchaser's own inspection and investigation thereof, and that Purchaser is entering into this contract based solely upon such inspection and investigation and not upon any information, data, statements or representations, written or oral, as to the physical condition, state of repair, use, cost of operation or any other matter related to the Premises or the other property included in the sale, given or made by Seller or its representatives and shall accept the same "AS IS" in their present condition and state of repair, subject to reasonable use, wear, tear and natural deterioration between the date hereof and the date of closing without any reduction in the purchase price or claim of any kind for any change in such condition by reason thereof subsequent to the date of this contract. Purchaser and its authorized representatives shall have the right, at reasonable times and upon reasonable notice (by telephone or otherwise) to Seller, to inspect the Premises before Closing.

**11. Environmental Remediation.** (a) Indemnification. Purchaser hereby agrees to defend, indemnify and hold Seller, Seller's agents, affiliates and subsidiaries harmless from and against any and all losses, liabilities, damages, liens, claims, demands, causes of action costs and expenses arising out of or related to the Release of Hazardous Substances or Hazardous Materials arising out of Purchaser's activities on the Property occurring prior to the Closing, or arising out of Purchaser's ownership of and/or activities on or after the Closing Date. This indemnification includes, without limitation, any and all costs incurred because of any investigation, review or testing of the Property or any cleanup, removal of structures, or restoration required or requested by a federal, state or local agency or political subdivision, including, without limitation, any such costs associated with the contamination of adjacent property or ground water caused by Purchaser or arising out of Purchaser's ownership and/or Purchaser's activities prior to and after the Closing Date. Subject to the qualifications contained in this Section 11, this indemnification shall include all third party claims related to, or arising out of a Release of Hazardous Substances or Hazardous Materials on or below the Property. Notwithstanding the foregoing, Purchaser's obligations under this Section 11 shall not be applicable to (i) any third party claim related to, or arising out of, the Release of Hazardous Substances or Hazardous Materials that affects or impacts Persons or property outside the boundaries of the Property due to Releases occurring prior to the Closing, which was not the result of Purchaser's activities on the Property, and/or (ii) any claim made by employees of Seller and Seller's contractors or any other third party for injuries sustained arising out of, or related to, the Release of Hazardous Substances or Hazardous Materials, prior to Closing, on or below the Property, which was not the result of Purchaser's activities on the Property. The Purchaser shall have the burden of establishing that it is not obligated to defend, indemnify and hold Seller harmless for environmental liabilities under this Section 11. For purposes of this Section 11(a), "Purchaser's activities" shall be deemed to mean and include the activities of the following entities: Purchaser's affiliates, contractors, subcontractors, engineers, agents, consultants and tenants, as well as any third party acting for, or on behalf of, or at the direction of the aforesaid entities.

(b) Definitions. For the purposes of this Section 11, the following definitions shall apply:

(1) "Hazardous Substance" or "Hazardous Material" shall mean (i) any solid, liquid, or gaseous chemical, material, or substance that is regulated by any present or future federal, state, regional, or local law, ordinance, rule, regulation, notice, order, or guidance, including but not limited to any chemical, material, or substance that is designated or regulated as a hazardous or toxic chemical, material or substance, or (ii) any chemical, material or substance the presence of which could be detrimental to the Property or hazardous to human health or safety or the environment, including but not limited to radioactive materials, including radon, natural gas, natural gas liquids (all of the foregoing gas called "Natural Gas Products"), liquefied natural gas, synthetic gas, or mixtures of Natural Gas Products and synthetic gas, lead, asbestos containing materials, polychlorinated biphenyls, urea formaldehyde, and petroleum products.

(2) "Release" shall mean any release, spill, leak, discharge, disposal, pumping, pouring, emitting, employing, injecting, leaching, dumping, or allow to escape or migrate into or through the environment.

(3) "Remediation" or "Remediate" means all work performed or to be performed to investigate, characterize and remove, contain, dispose, treat, or otherwise deal with the presence on, in, at or under the Property of Hazardous Materials at levels of contamination that require remediation under Environmental Laws, or any spilling, leaking, pumping, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing (including the abandonment or discarding of barrels, containers or other closed receptacles containing Hazardous Materials) of Hazardous Materials on or into the Property, in order to render the Property in compliance with applicable Environmental Laws.

(4) "Environmental Laws" means the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 et seq., as amended; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901 et seq., as amended; the Clean Air Act ("CAA"), 42 U.S.C. 7401 et seq., as amended; the Clean Water Act ("CWA"), 33 U.S.C. 1251 et seq., as amended; and any other federal, state, local or municipal laws, statutes, regulations, rules or ordinances imposing liability or establishing standards for protection of the environment.

(c) Remediation. The Purchaser covenants and agrees to Remediate, at its sole cost and expense, the Property when, if and to the extent Remediation is required by Environmental Laws or governmental authority having jurisdiction over the Property (the "Remediation Obligation"), provided that the Remediation Obligation shall not include any obligation by Purchaser to indemnify or defend or hold harmless Seller against (i) any fine, penalty or claim by a non-governmental third party, (ii) any fine or penalty by a governmental authority or (iii) any claim by a governmental authority other than a claim to Remediate the Property, provided in each instance, which such non-governmental third party or governmental authority may or could have asserted against Seller on or before the Closing Date.

(d) Indemnification. Except as limited by Section 11(c) above, Purchaser shall indemnify, defend and hold Seller harmless from and against: (i) all losses incurred by Seller arising out of Purchaser's breach of its covenants and obligations as provided herein; (ii) Purchaser's breach of the Remediation Obligation; and (iii) any claim by any subsequent owner of the Property for reimbursement for any costs of Remediation of the Property.

(e) Purchaser acknowledges that Seller is expressly relying on the provisions contained in this Section 11, which are a material inducement for Seller to enter into the transaction contemplated by this Agreement. Purchaser's obligations under this Section 11 shall, without limitation, survive the Closing.

**12. Insurable Title.** Seller shall give and Purchaser shall accept such title as as any reputable title company doing business in Suffolk County shall be willing to approve and insure in accordance with its standard form of title policy approved by the New York State Insurance Department, subject only to the matters provided for in this contract.

**13. Closing, Deed and Title.** (a) "Closing" means the settlement of the obligations of Seller and Purchaser to each other under this contract, including the payment of the purchase price to Seller, and the delivery to Purchaser of a bargain and sale deed with covenants against grantor's acts in proper statutory

short form for recording, duly executed and acknowledged, so as to convey to Purchaser fee simple title to the Premises, free of all encumbrances, except as otherwise herein stated. The deed shall contain a covenant by Seller as required by subd. 5 of Section 13 of the Lien Law.

(b) At the time of Closing and as explicit additional consideration for the transfer of title to the subject premises from Seller to Purchaser, Purchaser shall grant Seller, by deed and covenant that shall run with the land, an unobstructed perpetual easement for a handicapped accessible pedestrian walkway, over the area of the existing concrete sidewalk on the premises, that shall connect Peconic Avenue to the Town's property currently utilized as a parking area or, upon subsequent application by Purchaser subject to the approval of the Town, over an alternate and substitute unobstructed handicapped accessible pedestrian walkway of like area and dimension. The Purchaser and all its successors in interest shall be obligated to maintain said easement in perpetuity for the benefit of the Seller or its assigns. In addition to the foregoing, the Deed shall contain a reverter clause whereby the property would revert back to the Seller in the event Purchaser shall breach any of its representations and/or warranties or shall fail to satisfy any of its obligations under this or any other Agreement with the Town of Riverhead.

**14. Closing Date and Place.** Closing shall take place at the office of Riverhead Town Attorney, 200 Howell Avenue, Riverhead, New York 11901, at 10:00 o'clock on or about June 21, 2004 or, upon the satisfaction of all parties' requirements as provided herein.

**15. Conditions to Closing.** This contract and Purchaser's obligation to purchase the Premises are also subject to and conditioned upon the fulfillment of the following conditions precedent:

(a) The accuracy, as of the date of Closing, of the representations and warranties of Seller made in this contract.

~~(b) The delivery by Seller to Purchaser of a valid and subsisting Certificate of Occupancy or other required certificate of compliance, or evidence that none was required, covering the building(s) and all of the other improvements located on the property authorizing their use as a family dwelling at the date of Closing.~~

(c) The delivery by Seller to Purchaser of a duly executed and sworn affidavit (in form prescribed by law) claiming exemption of the sale contemplated hereby, if such be the case, under Article 31-B of the Tax Law of the State of New York and the Regulations promulgated thereunder, as the same may be amended from time to time (collectively the "Gains Tax Law"); or if such sale shall not be exempt under the Gains Tax Law, Seller and Purchaser agree to comply in a timely manner with the requirements of the Gains Tax Law and, at Closing, Seller shall deliver to Purchaser (i) an official return showing no tax due, or (ii) an official return accompanied by a certified or official bank check drawn on a New York State banking institution payable to the order of the New York State Department of Taxation and Finance in the amount of the tax shown to be due thereon. Seller shall (x) pay promptly any additional tax that may become due under the Gains Tax Law, together with interest and penalties thereon, if any, which may be assessed or become due after Closing, and/or execute any other documents that may be required in respect thereof, and (y) indemnify, defend and save Purchaser harmless from and against any of the foregoing and any damage, liability, cost or expense (including reasonable attorneys' fees) which may be suffered or incurred by Purchaser by reason of the nonpayment thereof. The provisions of this subparagraph (c) shall survive Closing.

(d) The delivery by Seller to Purchaser of a certification stating that Seller is not a foreign person, which certification shall be in the form then required by FIRPTA. If Seller fails to deliver the aforesaid certification or if Purchaser is not entitled under FIRPTA to rely on such certification, Purchaser shall deduct and withhold from the purchase price a sum equal to 10% thereof (or any lesser amount permitted

by law) and shall at Closing remit the withheld amount with the required forms to the Internal Revenue Service.

(e) ~~The delivery of the Premises and all buildings(s) and improvements comprising a part thereof in broom clean condition, vacant and free of leases or tenancies, together with keys to the Premises.~~

(f) ~~All plumbing (including water supply and septic systems, if any), heating and air conditioning, if any, electrical and mechanical systems, equipment and machinery in the buildings(s) located on the property and all appliances which are included in this sale being in working order as of the date of Closing.~~

(g) ~~If the Premises are a one or two family house, delivery by the parties at Closing of affidavits in compliance with state and local law requirements to the effect that there is installed in the Premises a smoke detecting alarm device or devices.~~

(h) The delivery by the parties of any other affidavits required as a condition of recording the deed.

(i) A determination from the governing body of the Urban Renewal Agency that Purchaser is a "Qualified and Eligible Sponsor" as required by Section 507 of the General Municipal Law.

(j) Upon Purchaser's application and at its sole expense, Purchaser shall, within ninety (90) days from the date hereof, secure any and all required approvals from the Riverhead Town Planning Board to effectuate the lot line amendment necessary to incorporate the subject premises into Purchaser's parcel directly adjacent to the premises. It is the explicit intent and agreement of the parties that the subject premises shall be incorporated into and made a part of Purchaser's adjacent premises and not to create a separate parcel that shall have been subdivided from the land owned by Seller.

**16. Deed Transfer and Recording Taxes.** At Closing, certified or official bank checks payable to the order of the appropriate State, City or County officer in the amount of any applicable transfer and/or recording tax payable by reason of the delivery or recording of the deed or mortgage, if any, shall be delivered by the *purchaser* to pay such transfer and/or recording tax, together with any required tax returns duly executed and sworn to, and such party shall cause any such checks and returns to be delivered to the appropriate officer promptly after Closing. The obligation to pay any additional tax or deficiency and any interest or penalties thereon shall survive Closing.

**17. Apportionments and Other Adjustments; Water Meter and Installment Assessments.** (a) To the extent applicable, the following shall be apportioned as of midnight of the day before the day of Closing:

(i) taxes, all applicable special district fees and assessments, water charges and sewer rents, on the basis of the fiscal period for which assessed.

(b) If Closing shall occur before a new tax rate is fixed, the apportionment of taxes shall be upon the basis of the tax rate for the immediately preceding fiscal period applied to the latest assessed valuation.

(c) If there is a water meter on the Premises, Seller shall furnish a reading to a date not more than 30 days before Closing and the unfixed meter charge and sewer rent, if any, shall be apportioned on the basis of such last reading.

(d) If at the date of Closing the premises are affected by an assessment which is or may become payable in annual installments, and the first installment is then a lien, or has been paid, then for the purposes of this contract all the unpaid installments shall be considered due and shall be paid by Seller at or prior to Closing.

(e) Any errors or omissions in computing apportionments or other adjustments at Closing shall be corrected within a reasonable time following Closing. This subparagraph shall survive Closing.

**18. Allowance for Unpaid Taxes, etc.** Seller has the option to credit Purchaser as an adjustment to the purchase price with the amount of any unpaid taxes, assessments, water charges and sewer rents, together with any interest and penalties thereon to a date not less than five business days after Closing, provided that official bills therefor computed to said date are produced at Closing.

**19. Use of Purchase Price to Remove Encumbrances.** If at Closing there are other liens or encumbrances that Seller is obligated to pay or discharge, Seller may use any portion of the cash balance of the purchase price to pay or discharge them, provided Seller shall simultaneously deliver to Purchaser at Closing instruments in recordable form and sufficient to satisfy such liens or encumbrances of record, together with the cost of recording or filing said instruments. As an alternative Seller may deposit sufficient moneys with the title insurance company employed by Purchaser acceptable to and required by it to assure their discharge, but only if the title insurance company will insure Purchaser's title clear of the matters or insure against their enforcement out of the Premises and will insure Purchaser's Institutional Lender clear of such matters. Upon notice (by telephone or otherwise), given not less than 3 business days before Closing, Purchaser shall provide separate certified or official bank checks as requested to assist in clearing up these matters.

**20. Title Examination; Seller's Inability to Convey; Limitations of Liability.** (a) Purchaser shall order an examination of title in respect of the Premises from a title company licensed or authorized to issue title insurance by the New York State Insurance Department or any agent for such title company promptly after the execution of this contract or, if this contract is subject to the mortgage contingency set forth in paragraph 8, after a mortgage commitment has been accepted by Purchaser. Purchaser shall cause a copy of the title report and of any additions thereto to be delivered to the attorney(s) for Seller promptly after receipt thereof.

(b)(i) If at the date of Closing Seller is unable to transfer title to Purchaser in accordance with this contract, or Purchaser has other valid grounds for refusing to close, whether by reason of liens, encumbrances or other objections to title or otherwise (herein collectively called "Defects"), other than those subject to which Purchaser is obligated to accept title hereunder or which Purchaser may have waived and other than those which Seller has herein expressly agreed to remove, remedy or discharge and if Purchaser shall be unwilling to waive the same and to close title without abatement of the purchase price, then, except as hereinafter set forth, Seller shall have the right, at Seller's sole election, either to take such action as Seller may deem advisable to remove, remedy, discharge or comply with such Defects or to cancel this contract; (ii) if Seller elects to take action to remove, remedy or comply with such Defects, Seller shall be entitled from time to time, upon Notice to Purchaser, to adjourn the date for Closing hereunder for a period or periods not exceeding 60 days in the aggregate (but not extending beyond the date upon which Purchaser's mortgage commitment, if any, shall expire), and the date for Closing shall be adjourned to a date specified by Seller not beyond such period. If for any reason whatsoever, Seller shall not have succeeded in removing, remedying or complying with such Defects at the expiration of such adjournment(s), and if Purchaser shall still be unwilling to waive the same and to close title without abatement of the purchase price, then either party may cancel this contract by Notice to the other given within 10 days after such adjourned date; (iii) notwithstanding the foregoing, the existing mortgage (unless this sale is subject to the same) and any matter created by Seller after the date hereof shall be released, discharged or otherwise cured by Seller at or prior to Closing.

(c) If this contract is cancelled pursuant to its terms, other than as a result of Purchaser's default, this contract shall terminate and come to an end, and neither party shall have any further rights, obligations or liabilities against or to the other hereunder or otherwise, except that: (i) Seller shall

promptly refund or cause the Escrowee to refund the Downpayment to Purchaser and, unless cancelled as a result of Purchaser's default or pursuant to paragraph 8, to reimburse Purchaser for the net cost of examination of title, including any appropriate additional charges related thereto, and the net cost, if actually paid or incurred by Purchaser, for updating the existing survey of the Premises or of a new survey, and (ii) the obligations under paragraph 27 shall survive the termination of this contract.

**21. Affidavit as to Judgments, Bankruptcies, etc.** If a title examination discloses judgments, bankruptcies or other returns against persons having names the same as or similar to that of Seller, Seller shall deliver an affidavit at Closing showing that they are not against Seller.

**22. Defaults and Remedies.** (a) If Purchaser defaults hereunder, Seller's sole remedy shall be to receive and retain the Downpayment as liquidated damages, it being agreed that Seller's damages in case of Purchaser's default might be impossible to ascertain and that the Downpayment constitutes a fair and reasonable amount of damages under the circumstances and retention of same is not a penalty.

(b) If Seller defaults hereunder, Purchaser shall have such remedies as Purchaser shall be entitled to at law or in equity, including, but not limited to, specific performance.

**23. Purchaser's Lien.** All money paid on account of this contract, and the reasonable expenses of examination of title to the Premises and of any survey and survey inspection charges, are hereby made liens on the Premises, but such liens shall not continue after default by Purchaser under this contract.

**24. Notices.** Any notice or other communication ("Notice") shall be in writing and either (a) sent by either of the parties hereto or by their respective attorneys who are hereby authorized to do so on their behalf or by the Escrowee, by registered or certified mail, postage prepaid, or

(b) delivered in person or by overnight courier, with receipt acknowledged, to the respective addresses given in this contract for the party and the Escrowee, to whom the Notice is to be given, or to such other address as such party or Escrowee shall hereafter designate by Notice given to the other party or parties and the Escrowee pursuant to this paragraph. Each Notice mailed shall be deemed given on the third business day following the date of mailing the same, except that any notice to Escrowee shall be deemed given only upon receipt by Escrowee and each Notice delivered in person or by overnight courier shall be deemed given when delivered.

**25. Assignment.** This contract shall not be assigned by Purchaser. Seller may assign this contract to the duly authorized Urban Renewal Agency for the Town of Riverhead.

**26. Broker.** Seller and Purchaser each represents and warrants to the other that it has not dealt with any real estate broker in connection with this sale.

**27. Miscellaneous.** (a) All prior understandings, agreements, representations and warranties, oral or written, between Seller and Purchaser are merged in this contract; it completely expresses their full agreement and has been entered into after full investigation, neither party relying upon any statement made by anyone else that is not set forth in this contract.

(b) Neither this contract nor any provision thereof may be waived, changed or cancelled except in writing. This contract shall also apply to and bind the heirs, distributees, legal representatives, successors and permitted assigns of the respective parties. The parties hereby authorize their respective attorneys to agree in writing to any changes in dates and time periods provided for in this contract.



(c) Any singular word or term herein shall also be read as in the plural and the neuter shall include the masculine and feminine gender, whenever the sense of this contract may require it.

(d) The captions in this contract are for convenience of reference only and in no way define, limit or describe the scope of this contract and shall not be considered in the interpretation of this contract or any provision hereof.

(e) This contract shall not be binding or effective until duly executed and delivered by Seller and Purchaser.

(f) Seller and Purchaser shall comply with IRC reporting requirements, if applicable. This subparagraph shall survive Closing.

(g) Each party shall, at any time and from time to time, execute, acknowledge where appropriate and deliver such further instruments and documents and take such other action as may be reasonably requested by the other in order to carry out the intent and purpose of this contract. This subparagraph shall survive Closing.

(h) This contract is intended for the exclusive benefit of the parties hereto and, except as otherwise expressly provided herein, shall not be for the benefit of, and shall not create any rights in, or be enforceable by, any other person or entity.

IN WITNESS WHEREOF, this contract has been duly executed by the parties hereto.

Philip J. Cardinale, Town Supervisor      *Seller*

**Attorney for Seller:**

Christopher Kent, Deputy Town Attorney

Address: 200 Howell Avenue  
Riverhead, NY 11901

Tel.: (631) 727-3200    Fax: (631) 727-6152

Raymond Dickhoff, President of NF Management  
*Purchaser*

**Attorney for Purchaser:**

Deborah Doty

Address: 670 West Creek Avenue  
PO Box 1181  
Cutchogue, NY 11935

Tel.: (631) 734-6648    Fax: (631) 734-7702

~~Receipt of the Downpayment is acknowledged and the undersigned agrees to act in accordance with the provisions of paragraph 6 above.~~

*Eserowee*

**Contract of Sale**

**PREMISES**

Title No.

Dist: 0600

Section 128

Block 6

Lot p/o 86

County or Town Riverhead

Address No number Peconic Avenue  
Riverhead, NY

TO

**EPA AND HUD Lead Paint Regulations:** Owners of pre-1978 housing must disclose known lead-based paint hazards to purchasers.